

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MARIA UCHYTIL, on behalf of the United
States of America,

Plaintiff,

v.

AVANADE INC., a Washington corporation,
and AVANADE FEDERAL SERVICES, a
Delaware corporation, ACCENTURE
FEDERAL SERVICES LLC, a Delaware
limited liability corporation,

Defendants.

CASE NO. C12-2091-JCC

STIPULATED PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle

parties to file confidential information under seal entitle parties to file confidential information under seal.

2. “CONFIDENTIAL” MATERIAL

“Confidential” material shall include the following documents and tangible things produced or otherwise exchanged: (1) contractual terms with customers, vendors, and other parties; (2) pricing, financial, and/or profit information; (3) suppliers and supplier lists; (4) customers, customer lists, and customer technical requirements; (5) product development information and information relating to new products; (6) development processes, designs, drawings, engineering, and hardware and software configuration information; (7) marketing plans, business plans, forecasts, and business strategies; (8) sensitive communications and information relating to products and services, including, but not limited to, testing and quality control records, which in the hands of competitors would be valuable; (9) customer feedback regarding products that have not been publicly disclosed; (10) protected personal information (including contact information) and other information subject to privacy laws; (11) internal financial reporting; (12) sensitive business information, akin to the categories specified above, produced by a non-party; and (13) communications with U.S. government agencies containing sensitive non-public information.

3. SCOPE

The protections conferred by this agreement cover not only confidential material (as defined above), but also (1) any information copied or extracted from confidential material; (2) all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony, conversations, or presentations by parties or their counsel that might reveal confidential material. However, the protections conferred by this agreement do not cover information that is in the public domain or becomes part of the public domain through trial or otherwise.

1
2 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

3 4.1 Basic Principles. A receiving party may use confidential material that is disclosed
4 or produced by another party or by a non-party in connection with this case only for prosecuting,
5 defending, or attempting to settle this litigation. Confidential material may be disclosed only to
6 the categories of persons and under the conditions described in this agreement. Confidential
7 material must be stored and maintained by a receiving party at a location and in a secure manner
8 that ensures that access is limited to the persons authorized under this agreement.
9 “CONFIDENTIAL” information and material must be stored in the United States and accessed
10 and viewed by United States citizens only, including permitted disclosures pursuant to section
11 4.2.

12 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
13 ordered by the court or permitted in writing by the designating party, a receiving party may
14 disclose any confidential material only to:

15 (a) the receiving party’s counsel of record in this action, as well as employees of
16 counsel to whom it is reasonably necessary to disclose the information for this litigation;

17 (b) the officers, directors, and employees (including in house counsel) of the
18 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties
19 agree that a particular document or material produced is for Attorney’s Eyes Only and is so
20 designated;

21 (c) experts and consultants to whom disclosure is reasonably necessary for this
22 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

23 (d) the court, court personnel, and court reporters and their staff;

24 (e) copy or imaging services retained by counsel to assist in the duplication of
25 confidential material, provided that counsel for the party retaining the copy or imaging service

1 instructs the service not to disclose any confidential material to third parties and to immediately
2 return all originals and copies of any confidential material;

3 (f) during their depositions, witnesses in the action to whom disclosure is
4 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
5 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of
6 transcribed deposition testimony or exhibits to depositions that reveal confidential material must
7 be separately bound by the court reporter and may not be disclosed to anyone except as permitted
8 under this agreement;

9 (g) the author or recipient of a document containing the information or a
10 custodian or other person who otherwise possessed or knew the information.

11 4.3 Filing Confidential Material. Before filing confidential material or discussing or
12 referencing such material in court filings, the filing party shall confer with the designating party
13 to determine whether the designating party will remove the confidential designation, whether the
14 document can be redacted, or whether a motion to seal or stipulation and proposed order is
15 warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the
16 standards that will be applied when a party seeks permission from the court to file material under
17 seal.

18 5. DESIGNATING PROTECTED MATERIAL

19 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party
20 or non-party that designates information or items for protection under this agreement must take
21 care to limit any such designation to specific material that qualifies under the appropriate
22 standards. The designating party must designate for protection only those parts of material,
23 documents, items, or oral or written communications that qualify, so that other portions of the
24 material, documents, items, or communications for which protection is not warranted are not
25 swept unjustifiably within the ambit of this agreement.

1 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
2 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to
3 unnecessarily encumber or delay the case development process or to impose unnecessary
4 expenses and burdens on other parties) expose the designating party to sanctions.

5 If it comes to a designating party's attention that information or items that it designated
6 for protection do not qualify for protection, the designating party must promptly notify all other
7 parties that it is withdrawing the mistaken designation.

8 5.2 Manner and Timing of Designations. Except as otherwise provided in this
9 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or
10 ordered, disclosure or discovery material that qualifies for protection under this agreement must
11 be clearly so designated before or when the material is disclosed or produced.

12 (a) Information in documentary form: (*e.g.*, paper or electronic documents and
13 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),
14 the designating party must affix the word "CONFIDENTIAL" to each page that contains
15 confidential material. If only a portion or portions of the material on a page qualifies for
16 protection, the producing party also must clearly identify the protected portion(s) (*e.g.*, by
17 making appropriate markings in the margins).

18 (b) Testimony given in deposition or in other pretrial proceedings: the parties and
19 any participating non-parties must identify on the record, during the deposition, or other pretrial
20 proceeding, all protected testimony, without prejudice to their right to so designate other
21 testimony after reviewing the transcript. Any party or non-party may, within thirty days after
22 receiving the transcript of the deposition or other pretrial proceeding, designate portions of the
23 transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect
24 confidential information at trial, the issue should be addressed during the pre-trial conference.
25

1 (c) Other tangible items: the producing party must affix in a prominent place on
2 the exterior of the container or containers in which the information or item is stored the word
3 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,
4 the producing party, to the extent practicable, shall identify the protected portion(s).

5 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
6 designate qualified information or items does not, standing alone, waive the designating party’s
7 right to secure protection under this agreement for such material. Upon timely correction of a
8 designation, the receiving party must make reasonable efforts to ensure that the material is
9 treated in accordance with the provisions of this agreement.

10 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

11 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
12 confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality
13 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
14 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
15 challenge a confidentiality designation by electing not to mount a challenge promptly after the
16 original designation is disclosed.

17 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
18 regarding confidential designations without court involvement. Any motion regarding
19 confidential designations or for a protective order must include a certification, in the motion or in
20 a declaration or affidavit, that the movant has engaged in a good faith meet and confer
21 conference with other affected parties in an effort to resolve the dispute without court action.
22 The certification must list the date, manner, and participants to the conference. A good faith
23 effort to confer requires a face-to-face meeting or a telephone conference.

24 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
25 intervention, the designating party may file and serve a motion to retain confidentiality under

1 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
2 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those
3 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on
4 other parties) may expose the challenging party to sanctions. All parties shall continue to
5 maintain the material in question as confidential until the court rules on the challenge.

6 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
7 LITIGATION

8 If a party is served with a subpoena or a court order issued in other litigation that compels
9 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that
10 party must:

11 (a) promptly notify the designating party in writing and include a copy of the
12 subpoena or court order;

13 (b) promptly notify in writing the party who caused the subpoena or order to issue
14 in the other litigation that some or all of the material covered by the subpoena or order is subject
15 to this agreement. Such notification shall include a copy of this agreement; and

16 (c) cooperate with respect to all reasonable procedures sought to be pursued by
17 the designating party whose confidential material may be affected.

18 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

19 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
20 material to any person or in any circumstance not authorized under this agreement, the receiving
21 party must immediately (a) notify in writing the designating party of the unauthorized
22 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material,
23 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of
24 this agreement, and (d) request that such person or persons execute the “Acknowledgment and
25 Agreement to Be Bound” that is attached hereto as Exhibit A.

1 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
2 MATERIAL

3 When a producing party gives notice to receiving parties that certain inadvertently
4 produced material is subject to a claim of privilege or other protection, the obligations of the
5 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
6 provision is not intended to modify whatever procedure may be established in an e-discovery
7 order or agreement that provides for production without prior privilege review. The parties agree
8 to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

9 10. NON TERMINATION AND RETURN OF DOCUMENTS

10 Within 60 days after the termination of this action, including all appeals, each receiving
11 party must return all confidential material to the producing party, including all copies, extracts
12 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of
13 destruction.

14 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
15 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
16 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
17 work product, even if such materials contain confidential material.

18 The confidentiality obligations imposed by this agreement shall remain in effect until a
19 designating party agrees otherwise in writing or a court orders otherwise.

20 11. COMPLIANCE WITH IMPORT AND EXPORT LAWS AND REGULATIONS

21 Each party agrees that it will comply with all applicable export and import laws and regulations,
22 including but not limited to, the U.S. Arms Export Control Act, as amended (22 U.S.C. §§ 2751-
23 2799), the International Traffic in Arms Regulations, as amended (22 C.F.R. Part 120 et seq.),
24 the Export Administration Act, as amended, (50 U.S.C. §§ 2401-2420), and the U.S. Export
25 Administration Regulations, as amended (15 C.F.R. § 730 et seq.). The parties shall not export,
disclose, furnish or otherwise provide any article, technical data, technology, defense service, or

1 technical assistance of the other party to any foreign person or entity, whether within the U.S. or
2 abroad, without obtaining, in advance, (a) appropriate U.S. government export authorization, and
3 (b) written approval from the other party. TMT software is U.S. origin and is subject to the U.S.
4 Export Administration Regulations (EAR). It has been self-classified within Export Control
5 Classification Number (ECCN) 5D992 and is eligible for export without a license to most end
6 users and country destinations. The software and related source code may not be released or
7 otherwise exported, as those terms are defined in the EAR, to prohibited end users (e.g., persons
8 identified on the BIS Entity List, Specially Designated Nationals List, etc.) or to sanctioned
9 country destinations (Syria, Sudan, North Korea, Iran, Cuba, or the Crimea Region of Ukraine)
10 or nationals thereof.

11 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

12 DATED this 15th day of June, 2017.

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14 CALFO EAKES & OSTROVSKY PLLC

KIRKLAND & ELLIS LLP

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1 DATED this 15th day of June, 2017.

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ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any documents in this proceeding shall not, for the purposes of this proceeding or any other proceeding in any other court, constitute a waiver by the producing party of any privilege applicable to those documents, including the attorney-client privilege, attorney work-product protection, or any other privilege or protection recognized by law.

DATED this 20th day of June, 2017.

A handwritten signature in black ink, reading "John C. Coughenour", is written over a horizontal line.

John C. Coughenour
UNITED STATES DISTRICT JUDGE

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____, [print or type full name], of _____
_____ [print or type full address], declare under penalty of perjury that I have
read in its entirety and understand the Stipulated Protective Order that was issued by the United
States District Court for the Western District of Washington on _____ [date] in
the case of *MARIA UCHYTIL, on behalf of the United States of America; AVANADE INC.*, a
Washington corporation, and AVANADE FEDERAL SERVICES, a Delaware corporation,
ACCENTURE FEDERAL SERVICES LLC, a Delaware limited liability corporation, Civil
Action No. C12-2091-JCC. I agree to comply with and to be bound by all the terms of this
Stipulated Protective Order and I understand and acknowledge that failure to so comply could
expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I
will not disclose in any manner any information or item that is subject to this Stipulated
Protective Order to any person or entity except in strict compliance with the provisions of this
Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Western District of Washington for the purpose of enforcing the terms of this Stipulated
Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____